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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

VALERIE BROOKS, individually and on behalf of all others similarly situated,

CASE No.:

Plaintiff,

V.

MORPHE, LLC., a Delaware limited liability company; and DOES 1 to 10, inclusive.

Defendants.

CLASS ACTION COMPLAINT

1. VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §12181
 2. VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT

DEMAND FOR JURY TRIAL

Plaintiff Valerie Brooks (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action based upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of their attorneys.

NATURE OF THE ACTION

1. Plaintiff is a visually-impaired and legally blind person who requires screen-reading software to read website content using her computer. Plaintiff uses the terms “blind” or “visually-impaired” to refer to all people with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision. Others have no vision.

1 2. Plaintiff, individually and on behalf of those similarly situated persons (hereafter
2 “Class Members”), brings this Class Action to secure redress against Defendant Morphe, LLC.
3 (“Defendant”) and DOES 1-10, for its failure to design, construct, maintain, and operate its
4 website to be fully and equally accessible to and independently usable by Plaintiff and other blind
5 or visually-impaired people. Defendant’s denial of full and equal access to its website, and
6 therefore denial of its products and services offered thereby and in conjunction with its physical
7 locations, is a violation of Plaintiff’s rights under the Americans with Disabilities Act (“ADA”)
8 and California’s Unruh Civil Rights Act (“UCRA”).

9 3. Because Defendant's website, <https://www.morphe.com/> (the "Website" or
10 "Defendant's website"), is not fully or equally accessible to blind and visually-impaired
11 consumers in violation of the ADA, Plaintiff seeks a permanent injunction to cause a change in
12 Defendant's corporate policies, practices, and procedures so that Defendant's website will
13 become and remain accessible to blind and visually-impaired consumers.

THE PARTIES

15 4. Plaintiff, at all times relevant and as alleged herein, is a resident of the County of
16 Sacramento. Plaintiff is a legally blind, visually-impaired handicapped person, and member of a
17 protected class of individuals under the ADA, pursuant to 42 U.S.C. § 12102(1)-(2), and the
18 regulations implementing the ADA set forth at 28 CFR §§ 36.101 *et seq.*

19 5. Defendant is a Delaware limited liability company, with its headquarters in San
20 Francisco, CA. Defendant's servers for the website are in the United States. Defendant conducts
21 a large amount of its business in California, and the United States as a whole. This store constitutes
22 as a place of public accommodation. Defendant's store provides to the public important goods
23 and services. Defendant's website provides consumers with access to a collection of affordable
24 makeup including eyeshadow palettes, eyeshadow singles, eye primer, eyeliner, lashes, mascara,
25 foundation, concealer, setting powder, primer, setting spray, blush, bronzer, contour, lipstick, lip
26 gloss, lip kits, brushes, nail sets, along with a collection of vegan makeup and other products and
27 services, which are available online and in store for purchase.

1 6. Plaintiff is unaware of the true names, identities, and capacities of the Defendants
2 sued herein as DOES 1 to 10. Plaintiff will seek leave to amend this complaint to allege the true
3 names and capacities of DOES 1 to 10 if and when ascertained. Plaintiff is informed and believes,
4 and thereupon alleges, that each Defendant sued herein as a DOE is legally responsible in some
5 manner for the events and happenings alleged herein and that each of Defendant sued herein as a
6 DOE proximately caused injuries and damages to Plaintiff as set forth below.

7 7. Defendant's stores are public accommodations within the definition of Title III of
8 the ADA, 42 U.S.C. § 12181(7). <https://www.morphe.com/> is a service, privilege, or advantage
9 of Defendant's services and product and locations.

JURISDICTION AND VENUE

1 8. This Court has subject matter jurisdiction over the state law claims alleged in this
2 Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d)(2)(A) because: (a) the
3 matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs; and (b) some
4 of the class members are citizens of a state (California) that is different than the state of citizenship
5 of Defendant (Delaware).

6 9. Defendant is subject to personal jurisdiction in this District. Defendant has been
7 and is committing the acts or omissions alleged herein in the Eastern District of California that
8 caused injury, and violated rights prescribed by the ADA and UCRA, to Plaintiff and to other
9 blind and other visually impaired-consumers. A substantial part of the acts and omissions giving
10 rise to Plaintiff's claims occurred in the Eastern District of California. Specifically, on several
11 separate occasions, Plaintiff has been denied the full use and enjoyment of the facilities, goods,
12 and services of Defendant's website in Sacramento County. The access barriers Plaintiff has
13 encountered on Defendant's website have caused a denial of Plaintiff's full and equal access
14 multiple times in the past, and now deter Plaintiff on a regular basis from accessing Defendant's
15 website. Similarly, the access barriers Plaintiff has encountered on Defendant's website have
16 impeded Plaintiff's full and equal enjoyment of goods and services offered at Defendant's brick-
17 and mortar stores.

1 10. This Court also has subject-matter jurisdiction over this action pursuant to 28
2 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff's claims arise under Title III of the ADA, 42
3 U.S.C. § 12181, *et seq.*, and 28 U.S.C. § 1332.

4 11. This Court has personal jurisdiction over Defendant because it conducts and
5 continues to conduct a substantial and significant amount of business in the State of California,
6 County of Sacramento, and because Defendant's offending website is available across California.

7 12. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §1391
8 because Plaintiff resides in this District, Defendant conducts and continues to conduct a
9 substantial and significant amount of business in this District, Defendant is subject to personal
10 jurisdiction in this District, and a substantial portion of the conduct complained of herein occurred
11 in this District.

12 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

13 13. The Internet has become a significant source of information, a portal, and a tool
14 for conducting business, doing everyday activities such as shopping, learning, banking,
15 researching, as well as many other activities for sighted, blind and visually-impaired persons
16 alike.

17 14. In today's tech-savvy world, blind and visually-impaired people have the ability to
18 access websites using keyboards in conjunction with screen access software that vocalizes the
19 visual information found on a computer screen. This technology is known as screen-reading
20 software. Screen-reading software is currently the only method a blind or visually-impaired
21 person may independently access the internet. Unless websites are designed to be read by screen-
22 reading software, blind and visually-impaired persons are unable to fully access websites, and the
23 information, products, and services contained thereon.

24 15. Blind and visually-impaired users of Windows operating system-enabled
25 computers and devices have several screen-reading software programs available to them. Some
26 of these programs are available for purchase and other programs are available without the user
27 having to purchase the program separately. Job Access With Speech, otherwise known as
28

1 "JAWS," is currently the most popular, separately purchased and downloaded screen-reading
2 software program available for a Windows computer.

3 16. For screen-reading software to function, the information on a website must be
4 capable of being rendered into text. If the website content is not capable of being rendered into
5 text, the blind or visually-impaired user is unable to access the same content available to sighted
6 users.

7 17. The international website standards organization, the World Wide Web
8 Consortium, known throughout the world as W3C, has published Success Criteria for version 2.0
9 of the Web Content Accessibility Guidelines ("WCAG 2.0" hereinafter). WCAG 2.0 are well-
10 established guidelines for making websites accessible to blind and visually-impaired people.
11 These guidelines are adopted, implemented and followed by most large business entities who
12 want to ensure their websites are accessible to users of screen-reading software programs. Though
13 WCAG 2.0 has not been formally adopted as the standard for making websites accessible, it is
14 one of, if not the most, valuable resource for companies to operate, maintain, and provide a
15 website that is accessible under the ADA to the public.

16 18. Within this context, the Ninth Circuit has recognized the viability of ADA claims
17 against commercial website owners/operators with regard to the accessibility of such websites.
18 *Robles v. Domino's Pizza, LLC*, Docket No. 17-55504 (9th Cir. Apr 13, 2017), Court Docket No.
19 BL-66. This is in addition to the numerous courts that already recognized such application.

20 19. Each of Defendant's violations of the Americans with Disabilities Act is likewise
21 a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights Act provides that any
22 violation of the ADA constitutes a violation of the Unruh Civil Rights Act. Cal. Civ. Code, §
23 51(f).

24 20. Further, Defendant's actions and inactions denied Plaintiff full and equal access to
25 their accommodations, facilities, and services. A substantial motivating reason for Defendant to
26 deny Plaintiff access was the perception of Plaintiff's disability. Defendant's denial of Plaintiff's
27 accessibility was a substantial motivating reason for Defendant's conduct. Plaintiff was harmed
28

1 due to Defendant's conduct. Defendant's actions and inactions were a substantial factor in
2 causing the lack of access to Plaintiff. Unruh Civil Rights Act. Cal. Civ. Code, § 51.

3 21. Inaccessible or otherwise non-compliant websites pose significant access barriers
4 to blind and visually-impaired persons. Common barriers encountered by blind and visually
5 impaired persons include, but are not limited to, the following:

- 6 a. A text equivalent for every non-text element is not provided;
- 7 b. Title frames with text are not provided for identification and navigation;
- 8 c. Equivalent text is not provided when using scripts;
- 9 d. Forms with the same information and functionality as for sighted persons are
10 not provided;
- 11 e. Information about the meaning and structure of content is not conveyed by
12 more than the visual presentation of content;
- 13 f. Text cannot be resized without assistive technology up to 200 percent without
14 loss of content or functionality;
- 15 g. If the content enforces a time limit, the user is not able to extend, adjust or
16 disable it;
- 17 h. Web pages do not have titles that describe the topic or purpose;
- 18 i. The purpose of each link cannot be determined from the link text alone or from
19 the link text and its programmatically determined link context;
- 20 j. One or more keyboard operable user interface lacks a mode of operation where
21 the keyboard focus indicator is discernible;
- 22 k. The default human language of each web page cannot be programmatically
23 determined;
- 24 l. When a component receives focus, it may initiate a change in context;
- 25 m. Changing the setting of a user interface component may automatically cause a
26 change of context where the user has not been advised before using the
27 component;
- 28 n. Labels or instructions are not provided when content requires user input;

- o. In content which is implemented by using markup languages, elements do not have complete start and end tags, elements are not nested according to their specifications, elements may contain duplicate attributes and/or any IDs are not unique;
 - p. Inaccessible Portable Document Format (PDFs) ; and,
 - q. The name and role of all User Interface elements cannot be programmatically determined; items that can be set by the user cannot be programmatically set; and/or notification of changes to these items is not available to user agents, including assistive technology.

FACTUAL BACKGROUND

22. Defendant offers the <https://www.morphe.com/> website, to the public. The website offers features which should allow all consumers to access the goods and services which Defendant offers in connection with its physical locations. The goods and services offered by Defendant include, but are not limited to the following: find store locations; access to a collection of affordable makeup including eyeshadow palettes, eyeshadow singles, eye primer, eyeliner, lashes, mascara, foundation, concealer, setting powder, primer, setting spray, blush, bronzer, contour, lipstick, lip gloss, lip kits, brushes, nail sets, along with a collection of vegan makeup and other products and services, which are available online and in store for purchase.

23. Based on information and belief, it is Defendant's policy and practice to deny Plaintiff and Class Members, along with other blind or visually-impaired users, access to Defendant's website, and to therefore specifically deny the goods and services that are offered and integrated with Defendant's stores. Due to Defendant's failure and refusal to remove access barriers on its website, Plaintiff and other visually-impaired persons have been and are still being denied equal and full access to Defendant's stores and the variety of makeup offered to the public through Defendant's Website.

Defendant's Barriers on Unruh Civil Rights Act. Cal. Civ. Code, § 51(f) Deny Plaintiff and Class Members' Access

24. Plaintiff is a visually-impaired and legally blind person, who cannot use a

1 computer without the assistance of screen-reading software. However, Plaintiff is a proficient
2 user of the JAWS screen-reader as well as Mac's VoiceOver and both use it to access the internet.
3 Plaintiff has visited <https://www.morphe.com/> on several separate occasions using the JAWS
4 and/or VoiceOver screen-readers.

5 25. During Plaintiff's numerous visits to Defendant's website, Plaintiff encountered
6 multiple access barriers which denied Plaintiff full and equal access to the facilities, goods and
7 services offered to the public and made available to the public on Defendant's website, and its
8 prior iterations. Due to the widespread access barriers Plaintiff and Class Members encountered
9 on Defendant's website, Plaintiff and Class Members have been deterred, on a regular basis, from
10 accessing Defendant's website. Similarly, the access barriers Plaintiff has encountered on
11 Defendant's website have deterred Plaintiff and Class Members from visiting Defendant's brick-
12 and-mortar stores.

13 26. While attempting to navigate Defendant's website, Plaintiff and Class Members
14 encountered multiple accessibility barriers for blind or visually-impaired people that include, but
15 are not limited to, the following:

16 a. Lack of Alternative Text ("alt-text"), or a text equivalent. Alt-text is invisible
17 code embedded beneath a graphic or image on a website that is read to a user
18 by a screen-reader. For graphics or images to be fully accessible for screen-
19 reader users, it requires that alt-text be coded with each graphic or image so
20 that screen-reading software can speak the alt-text to describe the graphic or
21 image where a sighted user would just see the graphic or image. Alt-text does
22 not change the visual presentation, but instead a text box shows when the
23 cursor hovers over the graphic or image. The lack of alt-text on graphics and
24 images prevents screen-readers from accurately vocalizing a description of the
25 image or graphic. As a result, Plaintiff and Class Members who are blind and
26 visually-impaired customers are unable to determine what makeup and nail
27 sets are available for purchase, find Defendants store locations, or complete
28 any purchases;

- 1 b. Empty Links that contain No Text causing the function or purpose of the link
2 to not be presented to the user. This can introduce confusion for keyboard and
3 screen-reader users;
- 4 c. Redundant Links where adjacent links go to the same URL address which
5 results in additional navigation and repetition for keyboard and screen-reader
6 users; and
- 7 d. Linked Images missing alt-text, which causes problems if an image within a
8 link does not contain any descriptive text and that image does not have alt-text.
9 A screen reader then has no content to present the user as to the function of the
10 link, including information or links for and contained in PDFs.

11 27. Recently in 2020, Plaintiff attempted to do business with Defendant on
12 Defendant's website. Plaintiff has visited prior iterations of the website <https://www.morphe.com/>
13 and also encountered barriers to access on Defendant's website.

14 28. Despite past and recent attempts to do business with Defendant on its website, the
15 numerous access barriers contained on the website and encountered by Plaintiff, has denied
16 Plaintiff full and equal access to Defendant's website. Plaintiff and Class Members, as a result of
17 the barriers on Defendant's website, continue to be deterred on a regular basis from accessing
18 Defendant's website. Likewise, based on the numerous access barriers Plaintiff and Class
19 Members have been deterred and impeded from the full and equal enjoyment of goods and
20 services offered in Defendant's stores and from making purchases at such physical locations.

Defendant Must Remove Barriers to Its Website

22 29. Due to the inaccessibility of the Defendant's website, blind and visually-impaired
23 customers such as the Plaintiff, who need screen-readers, cannot fully and equally use or enjoy
24 the facilities and services the Defendant offers to the public on its website. The access barriers
25 the Plaintiff has encountered have caused a denial of Plaintiff's full and equal access in the past,
26 and now deter Plaintiff on a regular basis from accessing the website.

27 30. These access barriers on Defendant's website have deterred Plaintiff from visiting
28 Defendant's physical locations, and enjoying them equally to sighted individuals because:

1 Plaintiff was unable to find the location and hours of operation of Defendant's locations on its
2 website, preventing Plaintiff from visiting the locations to view and purchase products and/or
3 services. Plaintiff and Class Members intend to visit the Defendant's store location in the near
4 future if Plaintiff and Class Members could access Defendant's website.

5 31. If the website was equally accessible to all, Plaintiff and Class Members could
6 independently navigate the website and complete a desired transaction, as sighted individuals do.

7 32. Plaintiff, through Plaintiff's attempts to use the website, have actual knowledge of
8 the access barriers that make these services inaccessible and independently unusable by blind and
9 visually-impaired people.

10 33. Because simple compliance with WCAG 2.0/WCAG 2.1 would provide Plaintiff
11 and Class Members who are visually-impaired consumers with equal access to the website,
12 Plaintiff and Class Members allege that Defendant engaged in acts of intentional discrimination,
13 including, but not limited to, the following policies or practices: constructing and maintaining a
14 website that is inaccessible to visually-impaired individuals, including Plaintiff and Class
15 Members; failing to construct and maintain a website that is sufficiently intuitive so as to be
16 equally accessible to visually-impaired individuals, including Plaintiff and Class Members; and
17 failing to take actions to correct these access barriers in the face of substantial harm and
18 discrimination to blind and visually-impaired consumers, such as Plaintiff and Class Members,
19 as a member of a protected class.

20 34. The Defendant uses standards, criteria or methods of administration that have the
21 effect of discriminating or perpetuating the discrimination against others, as alleged herein.

22 35. The ADA expressly contemplates the injunctive relief that Plaintiff
23 seeks in this action. In relevant part, the ADA requires:

24 In the case of violations of ... this title, injunctive relief shall include an order to
25 alter facilities to make such facilities readily accessible to and usable by
26 individuals with disabilities Where appropriate, injunctive relief shall also
include requiring the ... modification of a policy 42 U.S.C. § 12188(a)(2).

27 36. Because Defendant's website has never been equally accessible, and because
28

1 Defendant lacks a corporate policy that is reasonably calculated to cause the Defendant's website
2 to become and remain accessible, Plaintiff invokes 42 U.S.C. § 12188(a)(2) and seeks a
3 permanent injunction requiring the Defendant to retain a qualified consultant acceptable to
4 Plaintiff to assist Defendant to comply with WCAG 2.0/WCAG 2.1 guidelines for Defendant's
5 website. The website must be accessible for individuals with disabilities who use desktop
6 computers, laptops, tablets and smartphones. Plaintiff and Class Members seek that this
7 permanent injunction require Defendant to cooperate with the agreed-upon consultant to: train
8 Defendant's employees and agents who develop the website on accessibility compliance under
9 the WCAG 2.0/WCAG 2.1 guidelines; regularly check the accessibility of the website under the
10 WCAG 2.0/WCAG 2.1 guidelines; regularly test user accessibility by blind or vision-impaired
11 persons to ensure that the Defendant's website complies under the WCAG 2.0/WCAG 2.1
12 guidelines; and develop an accessibility policy that is clearly disclosed on the Defendant's
13 website, with contact information for users to report accessibility-related problems and require
14 that any third-party vendors who participate on the Defendant's website to be fully accessible to
15 the disabled by conforming with WCAG 2.0/WCAG 2.1.

16 37. If Defendant's website were accessible, Plaintiff and Class Members could
17 independently access information about addresses, hours, services offered and services available
18 for online purchase.

19 38. Although Defendant may currently have centralized policies regarding
20 maintaining and operating Defendant's website, Defendant lacks a plan and policy reasonably
21 calculated to make Defendant's website fully and equally accessible to, and independently usable
22 by, blind and other visually-impaired consumers.

23 39. Defendant has, upon information and belief, invested substantial sums in
24 developing and maintaining Defendant's website and Defendant has generated significant
25 revenue from Defendant's website. These amounts are far greater than the associated cost of
26 making Defendant's website equally accessible to visually impaired customers. Plaintiff has also
27 visited prior iterations of the Defendants website <https://www.morphe.com/> and also encountered
28 such barriers.

40. Without injunctive relief, Plaintiff and Class Members will continue to be unable to independently use Defendant's website, violating their rights.

CLASS ACTION ALLEGATIONS

41. Plaintiff, on behalf of herself and all others similarly situated, seeks to certify a nationwide class under Fed. R. Civ. P. 23(a) and 23(b)(2) (b)(3), the Nationwide class is initially defined as follows:

all legally blind individuals who have attempted to access Defendant's website by the use of a screen reading software during the applicable limitations period up to and including final judgment in this action.

42. The California class is initially defined as follows:

all legally blind individuals in the State of California who have attempted to access Defendant's website by the use of a screen reading software during the applicable limitations period up to and including final judgment in this action.

43. Excluded from each of the above Classes is Defendant, including any entity in which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Defendant. Also excluded are the judge and the court personnel in this case and any members of their immediate families. Plaintiff reserves the right to amend the Class definitions if discovery and further investigation reveal that the Classes should be expanded or otherwise modified.

44. *Numerosity.* Fed. R. Civ. P. 23(a)(1). This action has been brought and may properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the Class. Based on the number of customers who have visited Defendant's California stores, it is estimated that the Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of Members. The Members of the Class are so numerous that joinder of all Members is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

1 45. *Typicality*: Plaintiff and Class Members' claims are typical of the claims of the
2 Members of the Class as all Members of the Class are similarly affected by Defendant's wrongful
3 conduct, as detailed herein.

4 46. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the Members
5 of the Class in that they have no interests antagonistic to those of the other Members of the Class.
6 Plaintiff has retained experienced and competent counsel.

7 47. *Superiority*: A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy. Since the damages sustained by individual Class
9 Members may be relatively small, the expense and burden of individual litigation makes it
10 impracticable for the Members of the Class to individually seek redress for the wrongful conduct
11 alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid
12 the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will
13 be no difficulty in the management of this action as a class action. If Class treatment of these
14 claims were not available, Defendant would likely unfairly receive thousands of dollars or more
15 in improper revenue.

16 48. *Common Questions Predominate*: Common questions of law and fact exist as to
17 all Members of the Class and predominate over any questions solely affecting individual
18 Members of the Class. Among the common questions of law and fact applicable to the Class are:

- 19 i. Whether Defendant's website, <https://www.morphe.com/> is inaccessible to
20 the visually-impaired who use screen reading software to access internet
21 websites;
- 22 ii. Whether Plaintiff and Class Members have been unable to access
23 <https://www.morphe.com/> through the use of screen reading software;
- 24 iii. Whether the deficiencies in Defendant's website violate the Americans
25 with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.*;
- 26 iv. Whether the deficiencies in Defendant's website violate the California
27 Unruh Civil Rights Act, California Civil Code § 51 *et seq.*;
- 28 v. Whether, and to what extent, injunctive relief should be imposed on

Defendant to make <https://www.morphe.com/> readily accessible to and usable by visually-impaired individuals;

- vi. Whether Plaintiff and Class Members are entitled to recover statutory damages with respect to Defendant's wrongful conduct; and
 - vii. Whether further legal and/or equitable relief should be granted by the Court in this action.

7 49. The class is readily definable, and prosecution of this action as a Class action will
8 reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be
9 encountered in the management of this litigation which would preclude their maintenance of this
10 matter as a Class action.

11 50. The prerequisites to maintaining a class action for injunctive relief or equitable
12 relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds
13 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
14 with respect to the Class as a whole.

15 51. The prerequisites to maintaining a class action for injunctive relief or equitable
16 relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class
17 predominate over any questions affecting only individual Members; and a class action is superior
18 to other available methods for fairly and efficiently adjudicating the controversy.

19 52. The prosecution of separate actions by Members of the Class would create a risk
20 of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant.
21 Additionally, individual actions may be dispositive of the interest of all Members of the Class,
22 although certain Class Members are not parties to such actions.

23 53. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff
24 seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's
25 systematic policies and practices make declaratory relief with respect to the Class as a whole
26 appropriate.

COUNT I

Violations of the Americans With Disabilities Act, 42 U.S.C. § 12181 *et seq.* (On Behalf of Plaintiff, the Nationwide Class and the California Class)

54. Plaintiff alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 53, inclusive, of this Complaint as if set forth fully herein.

55. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*, provides: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

56. Under Section 302(b)(2) of Title III of the ADA, unlawful discrimination also includes, among other things: “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations”; and “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden”. 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii). “A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.” 28 C.F.R. § 36.303(a). In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the

¹ individual with a disability.” 28 C.F.R. § 36.303(c)(1)(ii).

2 57. Defendant's store locations are "public accommodations" within the meaning of
3 42 U.S.C. § 12181 *et seq.* Defendant generates millions of dollars in revenue from the sale of its
4 amenities and services, privileges, advantages, and accommodations in California through its
5 store and related services, privileges, advantages, and accommodations and its Website,
6 <https://www.morphe.com/> is a service, privilege, advantage, and accommodation provided by
7 Defendant that is inaccessible to customers who are visually-impaired like Plaintiff. This
8 inaccessibility denies visually-impaired customers full and equal enjoyment of and access to the
9 facilities and services, privileges, advantages, and accommodations that Defendant made
10 available to the non-disabled public. Defendant is violating the Americans with Disabilities Act,
11 42 U.S.C. § 12181 *et seq.*, in that Defendant denies visually-impaired customers the services,
12 privileges, advantages, and accommodations provided by <https://www.morphe.com/>. These
13 violations are ongoing.

14 58. Defendant's actions constitute intentional discrimination against Plaintiff and
15 Class Members on the basis of a disability in violation of the Americans with Disabilities Act, 42
16 U.S.C. § 12181 *et seq.* in that: Defendant has constructed a website that is inaccessible to Plaintiff
17 and Class Members; maintains the website in this inaccessible form; and has failed to take
18 adequate actions to correct these barriers even after being notified of the discrimination that such
19 barriers cause.

20 59. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights set forth
21 and incorporated therein, Plaintiff requests relief as set forth below.

COUNT II

Violations of the Unruh Civil Rights Act, California Civil Code § 51 *et seq.* (On Behalf of Plaintiff and the California Class)

25 60. Plaintiff alleges and incorporates herein by reference each and every allegation
26 contained in paragraphs 1 through 53, inclusive, of this Complaint as if set forth fully herein.

27 61. Defendant's locations are "business establishments" within the meaning of the
28 California Civil Code § 51 *et seq.* Defendant generates millions of dollars in revenue from the

1 sale of its services in California through its store locations and <https://www.morphe.com/> is a
2 service provided by Defendant that is inaccessible to customers who are visually-impaired like
3 Plaintiff and Class Members. This inaccessibility denies visually-impaired customers full and
4 equal access to Defendant's facilities and services that Defendant makes available to the non-
5 disabled public. Defendant is violating the Unruh Civil Rights Act, California Civil Code § 51 *et*
6 *seq.*, in that Defendant is denying visually-impaired customers the services provided by
7 <https://www.morphe.com/>. These violations are ongoing.

8 62. Defendant's actions constitute intentional discrimination against Plaintiff and
9 Class Members on the basis of a disability in violation of the Unruh Civil Rights Act, Cal. Civil
10 Code § 51 *et seq.* in that: Defendant has constructed a website that is inaccessible to Plaintiff and
11 Class Members; maintains the website in this inaccessible form; and has failed to take adequate
12 actions to correct these barriers even after being notified of the discrimination that such barriers
13 cause.

14 63. Defendant is also violating the Unruh Civil Rights Act, California Civil Code § 51
15 *et seq.* in that the conduct alleged herein likewise constitutes a violation of various provisions of
16 the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f) of the California Civil Code provides that a
17 violation of the right of any individual under the ADA shall also constitute a violation of the
18 Unruh Civil Rights Act.

19 64. The actions of Defendant were and are in violation of the Unruh Civil Rights Act,
20 California Civil Code § 51 *et seq.*, and, therefore, Plaintiff and Class Members are entitled to
21 injunctive relief remedying the discrimination.

22 65. Plaintiff and Class Members are also entitled to statutory minimum damages
23 pursuant to California Civil Code § 52 for each and every offense.

24 66. Plaintiff and Class Members are also entitled to reasonable attorneys' fees and
25 costs.

26 67. Plaintiff and Class Members are also entitled to a preliminary and permanent
27 injunction enjoining Defendant from violating the Unruh Civil Rights Act, California Civil Code
28 § 51 *et seq.*, and requiring Defendant to take the steps necessary to make

1 <https://www.morphe.com/> readily accessible to and usable by visually-impaired individuals.

2 **PRAAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, individually and on behalf of all Class Members, respectfully
4 requests that the Court enter judgment in her favor and against Defendant as follows:

- 5 A. For an Order certifying the Nationwide Class and California Class as
6 defined herein and appointing Plaintiff and her Counsel to represent the
7 Nationwide Class and the California Class;
- 8 B. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and
9 (2) and section 52.1 of the California Civil Code enjoining Defendant from
10 violating the Unruh Civil Rights Act and ADA and requiring Defendant to take
11 the steps necessary to make <https://www.morphe.com/> readily accessible to and
12 usable by visually-impaired individuals;
- 13 C. An award of statutory minimum damages of \$4,000 per offense per person
14 pursuant to section 52(a) of the California Civil Code.
- 15 D. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a),
16 52.1(h), and 42 U.S.C. § 12205;
- 17 E. For pre-judgment interest to the extent permitted by law;
- 18 F. For costs of suit; and;
- 19 G. For such other and further relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
22 for all claims so triable.

23
24 Dated: June 17, 2020

Respectfully Submitted,

25
26 */s/ Thiago M. Coelho*
Thiago M. Coelho
Bobby Saadian
27 **WILSHIRE LAW FIRM**
28 *Attorneys for Plaintiff and Proposed Class*